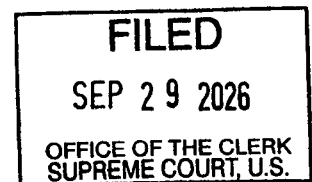


ORIGINAL

No. 26-456



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2026

JOSEPH A. CAMMARATA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JOSEPH A. CAMMARATA
Petitioner, pro se

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QUESTIONS PRESENTED

1. Whether Federal Rule of Criminal Procedure 5, as amended by the Due Process Protections Act of 2020 to add subsection (f), directing that in all criminal proceedings the judge “shall issue” an oral and written order confirming the prosecution’s disclosure obligations under *Brady v. Maryland* and the consequences of violating them, imposes a duty on the district court that a defendant cannot forfeit by silence; and whether the complete failure to issue that order in both of the prosecutions brought against this petitioner may be treated as harmless where the government then withheld every category of exculpatory evidence in its possession, each of which independently defeated an element of 26 U.S.C. 7201: the business records establishing expenses exceeding the income charged, the Forms 1042-S showing that the income had been reported to the Internal Revenue Service and tax withheld and paid on it, and the tens of thousands of settlement administrator letters telling claimants that the payments were generally not taxable income.
2. Whether the government satisfies *Brady v. Maryland* by delivering exculpatory material to counsel who represented the defendant in a different prosecution, where the defendant was never provided that material, thereafter proceeds pro se under *Faretta v. California*, and is transferred to a county jail a month

before trial without his discovery computer and without his legal work; and whether a defendant who exercises the right of self-representation thereby waives, within the meaning of *United States v. Olano*, any objection that he was unable to review discovery delivered to counsel in a different case, when he told the district court so at every pretrial hearing and in every motion.

3. Whether 28 U.S.C. 455(a) and the Due Process Clause permit the judges of a court of appeals to decide a criminal appeal, and to deny rehearing, where the attorney who serves as the Assistant Circuit Executive for Legal Affairs in that court's own Office of the Circuit Executive, an active member of the bar whose employer and business address of record are the court itself, is asserted, without denial by the government or by any court in more than two years, to be the spouse of the Securities and Exchange Commission attorney who led the parallel enforcement action that froze the defendant's assets and produced a judgment against him of \$50,471,573; where the Chief Judge who sat on the panel had himself authored the one sentence, unexplained order denying the motion to disqualify the entire court on that ground; and where requests for a statement of reasons were denied without reasons.

PARTIES TO THE PROCEEDING

The petitioner is Joseph A. Cammarata, the defendant and appellant below. The respondent is the United States of America.

RELATED PROCEEDINGS

United States v. Cammarata, No. 22-cr-00639 (D.N.J.) (judgment entered May 14, 2024), and *United States v. Cammarata*, No. 24-1983 (3d Cir.) (opinion and judgment April 7, 2026; rehearing denied May 7, 2026). This petition arises from those proceedings.

United States v. Cammarata, No. 21-cr-00427 (E.D. Pa.), and *United States v. Cammarata*, No. 23-2110 (3d Cir.). A petition for a writ of certiorari has been submitted to this Court in that matter.

Securities and Exchange Commission v. Cammarata, No. 21-cv-04845 (E.D. Pa.), and *Cammarata v. Securities and Exchange Commission*, No. 24-1381 (3d Cir.) (appeal docketed March 5, 2024; pending).

In re Cammarata, No. 25-1188 (3d Cir.) (mandamus petition docketed January 31, 2025; denied January 26, 2026; rehearing denied March 4, 2026), and *Cammarata v. United States District Court for the Eastern District of Pennsylvania*, No. 26-5387 (U.S.) (petition for a writ of certiorari filed July 28, 2026; respondent's waiver of the right to respond filed August 31, 2026; distributed for the conference of September 28, 2026).

In re Cammarata, No. 25-6128 (U.S.) (petition for a writ of mandamus filed October 21, 2025; denied without opinion January 20, 2026; rehearing denied May 18, 2026). That disposition reached no question on the merits.

United States v. Cammarata, No. 21-cr-00427 (E.D. Pa.) (amended motion under 28 U.S.C. 2255, ECF No. 489, Civil Action No. 26-379; pending).

Cammarata v. Washington, No. 2:26-cv-00007 (M.D. Ala.).

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OPINIONS BELOW

The opinion of the court of appeals (App. A) is not precedential and is unreported. The judgment of the court of appeals appears at App. B, and the order denying panel rehearing and rehearing en banc at App. C. The judgment of conviction and sentence of the district court, entered May 14, 2024, appears at App. D. The memorandum and order of the district court denying post trial relief (App. E) and the opinion and order denying reconsideration (App. F) are unreported.

JURISDICTION

The court of appeals entered its judgment on April 7, 2026. A timely petition for panel rehearing and rehearing en banc was denied on May 7, 2026. On June 1, 2026, Justice Alito extended the time to file a petition for a writ of certiorari to and including October 4, 2026, in Application No. 25A1323. This petition is filed within that time. See Sup. Ct. R. 29.2. This Court has jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL, STATUTORY AND RULE PROVISIONS INVOLVED

The Fifth Amendment provides in relevant part that no person shall “be deprived of life, liberty, or property, without due process of law.” The suppression of evidence favorable to an accused violates that guarantee. *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

The Sixth Amendment provides in relevant part that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury,” and “to have the Assistance of Counsel for his defence.” The right of a defendant to conduct his own defense, and the right to retain counsel of his choice, both derive from that Amendment. *Faretta v. California*, 422 U.S. 806, 819 (1975); *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144 (2006).

Federal Rule of Criminal Procedure 5(f)(1) provides: “In all criminal proceedings, on the first scheduled court date when both prosecutor and defense counsel are present, the judge shall issue an oral and written order to prosecution and defense counsel that confirms the disclosure obligation of the prosecutor under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, and the possible consequences of violating such order under applicable law.”

Title 28 U.S.C. 455(a) provides: “Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”

Title 26 U.S.C. 7201 provides: “Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony.” Conviction requires proof beyond a reasonable doubt of three elements: the existence of a tax deficiency, that is, a tax due and owing beyond what was reported; an affirmative act constituting an attempt to evade or defeat that tax,

meaning conduct the likely effect of which would be to mislead or to conceal; and willfulness, the voluntary and intentional violation of a known legal duty. *Sansone v. United States*, 380 U.S. 343, 351 (1965); *Spies v. United States*, 317 U.S. 492, 499 (1943); *Cheek v. United States*, 498 U.S. 192, 201 (1991). A deficiency cannot be established without determining the character of the receipts said to produce it, *Boulware v. United States*, 552 U.S. 421, 424 (2008), and it cannot be established at all where documented deductions exceed the income alleged.

INTRODUCTION

This case presents the first opportunity for this Court to say what Rule 5(f) requires. Congress adopted the Due Process Protections Act because prosecutors had repeatedly failed to honor *Brady* and because Congress concluded that a standing order from the bench, in every case, at the outset, was the least intrusive way to keep that from recurring. The rule is addressed to the judge. It says the judge “shall issue” the order. It asks nothing of the defendant.

No such order was issued in this case. None appears on this docket, none appears on the docket of the related prosecution of the same defendant in the Eastern District of Pennsylvania, and none appears in any transcript. What followed is what the rule exists to prevent. The government then withheld all of the records that defeated the elements of the offense. It produced an index that dropped nearly every account its own earlier index had listed, and the dropped accounts held the records proving there was no tax deficiency at all. It told the defense in

writing that Forms 1042-S and the settlement administrators' claim letters did not exist. The forms were in its own production in the earlier case, and they showed that the income had been reported to the Internal Revenue Service and tax withheld and paid on it. The letters, which told claimants that the payments were generally not taxable income, accompanied every claim payment check across three hundred ninety seven settlement funds and existed in the tens of thousands.

The single most telling fact is what the government did with those records internally. It did not give them to its own Internal Revenue Service revenue agent, the witness who calculated the tax due and owing on which this conviction rests. He testified that he was given no evidence of any expenses at all. A prosecution team that had truly produced those records to the defense would have had no reason to keep them from the agent whose job was to compute the tax.

The court of appeals affirmed in a nine page unpublished opinion that never mentions Rule 5(f). On *Brady* it held that there was "no suppression" because the government had handed material to lawyers, and it held in a footnote that the petitioner had "waived" any argument that he never had the chance to review it. The first proposition makes *Brady* a matter of paperwork. The second conditions the exercise of the right of self-representation on the surrender of the right to exculpatory evidence.

The third question concerns the forum. The petitioner has asserted, repeatedly and in writing,

that an attorney employed by the Third Circuit, who serves as the Assistant Circuit Executive for Legal Affairs in its own Office of the Circuit Executive, is the spouse of the Securities and Exchange Commission attorney who led the parallel enforcement action against him. In more than two years no court and no government lawyer has denied it or addressed it. When he moved to disqualify the entire circuit, the Chief Judge authored a one sentence order denying the motion, and seven months later sat on the panel that decided this appeal.

BACKGROUND

The proceedings that produced this petition are part of a single sequence that began in the first week of November 2021.

The indictment in the fraud case was unsealed on November 3, 2021. That same day the Securities and Exchange Commission filed a civil enforcement action in the same district, which was assigned to the same judge who would preside over the criminal case. The petitioner was arrested in the Southern District of Florida and was detained at the Federal Detention Center in Miami. Agents searched his office and removed his business records. His three computers were left behind with a cooperating defendant for approximately two weeks, and that cooperating defendant acknowledged in his trial testimony that he had accessed them.

The Commission's application was made ex parte and was signed by the attorney who led the action. It

was supported by a declaration with one hundred four exhibits, filed in five volumes. SEC v. Cammarata, No. 21-cv-04845 (E.D. Pa.), ECF Nos. 2, 3 (Nov. 3, 2021). The district court granted it the next day, freezing approximately seventy eight million dollars, which was the whole of the petitioner's assets. Id., ECF No. 4 (Nov. 4, 2021); App. J. The motion did not allege irreparable harm. The order issued in less than a day. The petitioner was in the physical custody of the United States Marshals in the Southern District of Florida on the morning the show cause hearing proceeded in Philadelphia. The return of service records personal service on him in the Marshals cellblock in Miami. He has maintained, in filings no court has addressed, that the date the return records is not the date on which that occurred. The freeze was extended beyond the fourteen days Rule 65(b) allows without notice or hearing. The freeze is what left him unable to retain counsel of his choice in the prosecution that produced this petition.

The fraud prosecution went to trial in October 2022. No Rule 5(f) order was issued there either. The petitioner has shown on that record, and the government has never denied, that the prosecutor acknowledged at trial that the claims had been assigned and then moved to strike the reference to the assignments, and that no court has applied the controlling authority of *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269 (2008), under which a valid assignment transfers the right to enforce a claim. The petitioner has also asserted, in filings that no court has answered, that the

district judge in those matters was subject to disqualification on several grounds, including a financial interest, comments reflecting bias, and the deletion of portions of a transcript. That judge is also a defendant in a civil action the petitioner filed in the District of New Jersey, *Cammarata v. Donnelly*, No. 24-cv-01000, which remains pending on an amended complaint after the claims first pleaded against him were dismissed on immunity grounds. He has not recused in any of these matters, and no court has adjudicated the grounds the petitioner has raised. The defects in the freeze order and in the judgment that followed it were the subject of a motion under Federal Rule of Civil Procedure 60(b) (4) in No. 21-cv-04845 (ECF No. 421), which the Commission opposed (ECF No. 423) and which the same district judge denied on September 9, 2026 (ECF Nos. 425, 426). A timely motion to alter or amend that judgment, filed September 14, 2026 (ECF No. 427), remains pending.

The tax indictment followed in the District of New Jersey on September 22, 2022, fourteen days after a superseding indictment in the fraud case and twenty five days before the fraud trial began. The sole witness before the grand jury was an Internal Revenue Service special agent, examined by a Special Assistant United States Attorney who used the word fraud twenty seven times in a fifty page presentation, at a time when no jury had found the petitioner guilty of fraud and the presumption of innocence remained intact. The probable cause the grand jury found rested on the premise that the income at issue was fraud proceeds, a premise the

prosecutor affirmed as established fact twenty seven times before any fraud trial had taken place.

In January 2025 the petitioner sought a writ of mandamus in the court of appeals addressed to all three of these matters at once. *In re Cammarata*, No. 25-1188 (3d Cir.). The petition asked that court to reach what no court had reached: the refusal to apply *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269 (2008), to claims the government itself acknowledged had been assigned; the conduct of the district judge in the fraud and civil cases, including comments reflecting bias, the deletion of portions of a transcript, the holding of simultaneous hearings in the criminal and civil matters, and ex parte communication with the judge of a related case; the suppression and grand jury misrepresentations in this tax case; and the disqualification of the Third Circuit itself. Neither the United States nor the Commission filed any response to the petition. The petitioner filed motions to transfer the proceeding to another circuit, to expedite it, to supplement it with newly discovered evidence, and for a statement of reasons. The court of appeals held the petition for three hundred sixty one days and then denied it on the ground that the issues could be raised on appeal, stating that it saw "no evidence of bias" on the part of the district judges. The opinion did not address the disqualification of the circuit itself, which was the one question no appeal could reach, and it disposed of every pending motion in a single sentence.

The financial consequences of these proceedings are cumulative. In the criminal fraud case the district

court ordered restitution and forfeiture totaling \$47,769,779.02, although the court of appeals later vacated the restitution order, vacated the forfeiture order in part, and remanded. In the civil enforcement action the court entered a final judgment on January 23, 2024 for disgorgement of \$43,496,148 plus prejudgment interest of \$6,975,425, a total of \$50,471,573. In this case the court ordered restitution of \$6,023,189.

STATEMENT OF THE CASE

A. The offense and its elements

The indictment charged five counts of tax evasion under 26 U.S.C. 7201 for calendar years 2015 through 2019, alleging unreported income of approximately sixteen million dollars in the aggregate. Conviction required proof of a tax deficiency, an affirmative act of evasion, and willfulness. *Sansone*, 380 U.S. at 351.

B. The parallel prosecution and the two discovery indexes

In the earlier fraud prosecution the government produced a four page financial discovery index, created in February 2022, listing roughly twenty one groups of financial accounts, including accounts at Merrill Lynch, Bank of America, Morgan Stanley, E*Trade, TD Ameritrade, Columbia Bank and American Express.

The production index in this case is two pages. Of the roughly twenty one account groups in the earlier fraud discovery index, only two survive, and neither

of the two contains the business expense records. Merrill Lynch, Bank of America, Morgan Stanley, E*Trade, TD Ameritrade, Columbia Bank and American Express are absent in their entirety. The Merrill Lynch accounts are where the petitioner's business transactions were concentrated, and they hold the records of the business expenses at issue here. The two indexes are reproduced at App. K1 and App. K2 and may be compared line by line.

The government cannot claim ignorance of those accounts. Ten months before the tax indictment, the Commission had obtained an asset freeze order whose Appendix A lists, account by account, the petitioner's own accounts and those of fifteen business entities, including accounts at Merrill Lynch, Bank of America, Morgan Stanley and Columbia Bank. App. J. The Internal Revenue Service special agent assigned to this case told the grand jury he had obtained information from the Commission's parallel civil case, and defense counsel identified him at trial as the preparer of the summary exhibit presenting the tax due and owing. Grand Jury Tr. 4-5 (Sept. 22, 2022); Tr. Vol. 10 at 1534.

Nor did the government give those records to the revenue agent it retained to compute the tax. That agent testified at trial that he received no evidence of business expenses at all. Tr. Vol. 8 at 1386-87, 1389. The government's failure to give the records to its own computation witness is the strongest indication in this record that the suppression was knowing and deliberate rather than inadvertent.

C. The district court directs the government to identify the relevant discovery, and the laptop

On March 24, 2023 the district court entered a memorandum on the scope of discovery. The court observed that the government's attorneys were "more knowledgeable about the content of discovery based on its involvement in the Eastern District of Pennsylvania criminal proceeding" and directed that the government "should review and direct defense counsel to the discovery that is relevant to this action." App. G.

Two weeks later, at a hearing on April 6, 2023, the court addressed the petitioner's records and the computer holding his discovery. The court said it was "hard to detail an order that will allow Mr. Cammarata to develop a defense," that "I do agree with Mr. Cammarata that is necessary," and that "I do think Mr. Cammarata has a right to access his own records." ECF No. 139 at 10-11 (quoting Tr. of Apr. 6, 2023, at 28-29).

The petitioner's discovery was kept on a laptop in the custody of the Bureau of Prisons at the Federal Detention Center in Philadelphia. The government itself had loaded the discovery onto it; one of its own production folders is captioned "Discovery to put on Cammarata Computer." Over ten months the petitioner was permitted access to that laptop fewer than ten times.

After the court's March 2023 memorandum the government took the laptop from the Bureau of Prisons in order to update it. The petitioner told the district court, in a motion filed under seal, that the

government had done so without notice to him and had thereby obtained his legal notes, his marked evidence and his defense strategy. The court struck that motion on the government's application rather than deciding it. When the laptop came back it carried the new, reduced discovery index and the files associated with it, and still contained none of the business expense records. The purpose of the court's memorandum had been to get the relevant discovery to the defense, and the government used the occasion of complying with it to update the laptop without adding the one category of records the petitioner had demanded at every pretrial hearing and in every motion.

D. Transfer, self-representation, and trial

The district court permitted the petitioner to represent himself in October 2023, with appointed counsel remaining as standby counsel.

On or about September 10, 2023, a month before trial, the petitioner was transferred from the Federal Detention Center in Philadelphia to the Monmouth County Correctional Institution. He was transferred without the discovery laptop and without his legal work and trial preparation, all of which was left behind. The laptop was never provided to him again, despite repeated requests, including requests that it be examined forensically to establish that the business expense records the government claimed to have produced had never been on it.

A drive of data approved by the county jail did not reach him until October 24, 2023, about a week before trial. The jail permitted review of discovery

one day a week for fifty minutes. That was the whole of his access to the record of his own case. The data he finally received also contained no business expense records. He did not obtain the underlying expense records at all before the verdict. During trial his brother obtained material from counsel in the fraud case, but it arrived on thumb drives that standby counsel could not open. Tr. Vol. 7 at 1038, 1041-42. The district court itself later described the sequence, writing that the petitioner "failed to develop the business expense deductions until about the last day of trial." App. E at 6.

At trial the government told the court that all of the fraud case discovery had been reproduced to counsel in this case before the petitioner went pro se. He answered on the record: "That's not true. I never got that discovery. I had no access to it until Wednesday, and the jail only prints on Wednesday. I printed it as of yesterday."

What he had printed were Forms 1042-S. Before trial, defense counsel had asked the government in writing for Forms 1042-S, Forms 1099 and the settlement administrators' claim letters. The government answered in writing that there were none. The forms were in the government's own production in the earlier case. The petitioner produced sixty eight of them at trial, bearing the government's own Bates numbers. For two settlement funds in 2017 alone they reflected more than \$375,330 reported to the Internal Revenue Service with tax withheld and paid. The petitioner's filings state that the government responded by claiming that the forms had never existed in its

records, or were falsified, or had not come from the Internal Revenue Service. ECF No. 155 at 9. What is undisputed is what the government told the court of appeals. After the petitioner raised the forms at trial, the government "undertook a new search and confirmed that the approximately 42 Forms 1042 that it had provided in discovery had been filed with the IRS," and it then told that court that the forms reflected total withholding of "only about \$12,000." Gov't C.A. Br. 52-53. The testimony on which that characterization rested was given on a trial day whose transcript has never been produced to the petitioner.

The petitioner moved at once for relief. "I wanted to make an oral motion for *Brady* violation relief." Tr. Vol. 8 at 1198. The court did not rule. It said: "I'll reserve right now, but if you want to use those documents, we'll mark them in for you." Id. at 1202. It then said what the claim would require: "We have to swear you in and have a hearing on that if that's what you're saying. I don't think I need to do that right now. You have access to the documents, you can use them if you want." Id. at 1202-03. No such hearing was ever held, in the six months before sentencing or at any time after. Five days later the court summarized the ruling differently: "he was saying there was a *Brady* violation, and I denied it." Tr. Vol. 10 at 1539.

The same written request had asked for the settlement administrators' claim letters, the statements sent to claimants that the distributions being paid were generally not taxable income. Those were not occasional documents. A statement of that

kind accompanied every claim payment check, and the claimant entities had recovered from three hundred ninety seven settlement funds, each paying claims by check in the thousands. The letters therefore numbered in the tens of thousands. They had been seized by the Federal Bureau of Investigation and were in the government's files. The government said no such documents existed and produced not one of them.

The government's tax computation expert, an Internal Revenue Service revenue agent, testified that he had not prepared the original computation, which his supervisor had prepared from figures assembled by others. Tr. Vol. 10 at 1538-39. On deductions he testified: "There was no evidence provided to me that there were expenses at all, even ones already on the tax return, and certainly not additional expenses beyond what was deducted on the tax return." Tr. Vol. 8 at 1387. Asked whether he had looked for deductions the petitioner was entitled to, he answered: "I was not asked to analyze records to find those, and so I did not." Id. at 1389. The summary exhibit through which the tax due and owing was presented to the jury, Government Exhibit 1004, was captioned "criminal tax computation," and defense counsel objected that the agent who prepared it was never called to lay its foundation. Tr. Vol. 10 at 1533-34. The district court ordered the word removed. It then found that the word had nevertheless appeared "in two places when it was shown to the jury during Mr. Shapiro's closing argument," called it "a mistake," and denied a mistrial. Id. at 1569-72.

The jury convicted on all five counts. The court imposed seventy two months of imprisonment and ordered restitution of \$6,023,189.

E. The post trial record

In post trial filings the petitioner documented business expenses for 2015 through 2019, line by line, against the government's own Bates numbers. His sworn declaration executed February 14, 2024 put the documented total at \$16,982,751.81. ECF No. 139 at 16-17. That declaration states the documented total and stated that the total exceeds twenty million dollars when credit card and additional bank records are included. In those same filings he identified the suppression of the Forms 1042-S and of the claims administrator letters that "stated the payments were not taxable." ECF No. 137 at 2; ECF No. 155 at 9.

The government has never contested a single line item of those expenses. Every version of the figure exceeds the approximately sixteen million dollars of income alleged in the indictment. On this record, with the expenses unchallenged, there was no tax due and owing, and the first element of the offense fails.

The district court denied relief. The petitioner sought reconsideration, invoking *Houston v. Lack*, 487 U.S. 266 (1988) and filing a declaration of the date he handed his motion to jail staff. A successor judge denied the motion on the grounds that the notice of appeal had divested the court of jurisdiction and that the evidence was not new because the petitioner had possessed it earlier. The second ground cannot be

squared with the first premise of the *Brady* claim. If he had the records, the deficiency was disproved at trial. If he did not, the suppression is established.

F. The appeal

Appointed counsel filed an opening brief in December 2024. The petitioner had earlier filed a pro se brief and a pro se supplemental brief in the related appeal. Retained counsel then appeared here and filed a second brief, which the clerk designated the operative opening brief, and appointed counsel's brief was disregarded.

On August 4, 2025 the petitioner moved pro se to replace retained counsel, stating that four emails in the preceding month had gone unanswered and that filings had been made over his written objection. Two days later counsel moved to withdraw. On August 25, 2025 the court denied both motions and refused to docket the petitioner's pro se reply brief, which raised the suppression, Rule 5(f), constructive amendment and confrontation arguments counsel had not raised. Counsel filed a reply brief on September 5, 2025 that did raise Rule 5(f). In September 2025 an order of the court addressed to the petitioner was returned by the Postal Service marked "RETURN TO SENDER."

On January 29, 2026 the petitioner filed a formal notice to the Chief Judge of pending matters requiring adjudication. On February 4, 2026 the clerk refused it, stating that parties represented by counsel may not file pro se and that in the future only submissions made by counsel would be accepted.

The case was submitted on December 2, 2025 to a panel consisting of the Chief Judge and two circuit judges. On April 7, 2026 the panel affirmed. The same day, retained counsel was allowed to be relieved by the court.

The opinion held that the sufficiency challenge was reviewable only for plain error because appellate counsel had argued a different element than trial counsel; that three of the six claimed disclosure violations, including those concerning the Forms 1042-S and the claim letters, would not be reached because they had not been included in the Rule 33 motion; that there had been no suppression of the documents used to prepare the government's income summary because "Cammarata does not argue that the government withheld those documents from the defense," and that he argued "only that, after he obtained permission to represent himself, he was unable to review the documents the government provided to his attorney when he was represented by counsel"; and, in a footnote, that "Cammarata has waived any argument that he did not have the opportunity to review the documents that were produced." App. A at 5-9. The opinion does not mention Rule 5(f) or the Due Process Protections Act.

The premise of that holding is not what the record shows. The petitioner did not argue merely that he lost access when he began representing himself. He had never received the business expense records at any point: not from counsel in the fraud case, not from counsel in this case, not from the government, and not on the discovery laptop even after the government took the laptop to comply with the

district court's direction. He said so at every pretrial hearing and in every motion, he said so at trial, and he proved it in post trial filings the government has never disputed.

Rehearing was denied on May 7, 2026.

REASONS FOR GRANTING THE PETITION

I. This Court should decide what Rule 5(f) requires and what follows when a district court never issues the order the rule commands.

A. The rule is a duty imposed on the court, not a request the defendant must make.

Rule 5(f)(1) is written in the imperative and it is addressed to one actor. "In all criminal proceedings, on the first scheduled court date when both prosecutor and defense counsel are present, the judge shall issue an oral and written order." The defendant has no role in it. He is not required to ask for the order, to object to its absence, or to remind the court of its own obligation. The rule exists precisely because the ordinary adversarial mechanisms had failed to secure compliance with *Brady*, and Congress therefore placed the duty on the only participant with the power to enforce it.

That drafting choice matters to the question of forfeiture. A defendant can forfeit a right he was required to invoke. He cannot forfeit the court's failure to perform a duty the rule assigns to the court alone and that the rule requires the court to perform at a moment when, in the ordinary case, the

defendant has just been arraigned and has no reason to know the rule exists. Treating silence as forfeiture would make Rule 5(f) unenforceable in every case in which it matters most, because the defendants most harmed by its absence are precisely those who do not know it should have happened.

The distinction this Court drew in *United States v. Olano*, 507 U.S. 725, 733 (1993), confirms the point. Waiver is the intentional relinquishment of a known right. Forfeiture is the failure to make a timely assertion of one. Neither concept fits a defendant who never had a right to assert, because the rule directed the court, not him, to act, and who never knew that the order had been omitted. Whatever else Rule 5(f) may permit, it cannot be that the defendant loses its protection by failing to correct the judge.

B. The question is recurring, important and unresolved.

Rule 5(f) governs every federal criminal case in the country. Since the rule took effect, district courts have issued thousands of Rule 5(f) orders, and the form of those orders varies widely among districts. What has not been settled is the consequence of a complete failure. The court of appeals did not decide the question here. It did not mention the rule. No order in this case, and none in the related fraud prosecution of the same defendant by the same prosecutors, addresses the omission. The petitioner is aware of no decision of this Court addressing it, and the courts of appeals have not converged on an answer. This case therefore presents the question

cleanly, and it presents it in a posture where the answer will make a difference.

The question also has an institutional dimension that this Court alone can address. Congress enacted the Due Process Protections Act as a corrective. If the rule's violation carries no consequence, and if a defendant's failure to demand compliance forfeits the point, the statute becomes advisory. Rules of criminal procedure adopted by this Court and confirmed by Congress ought not depend for their force on the willingness of the party they protect to remind the court to follow them. That is especially so where, as here, the suppressed evidence was dispositive of guilt and the same prosecutors appeared in both of the prosecutions in which the order was omitted.

C. The failure here cannot be dismissed as harmless.

This is not a case in which the missing order would have been a formality. The Rule 5(f) order is a warning about *Brady*. Here the government suppressed not one item but every category of exculpatory evidence in its possession, and each category defeated a different element of the offense.

First, the business records. The government held them. It had gathered them in the earlier prosecution and indexed them there. It dropped them from the index it produced in this case. It did not restore them after the district court directed it to identify the relevant discovery, and it did not add them to the petitioner's discovery laptop even when it took the laptop for the stated purpose of complying

with that direction. It did not give them to its own revenue agent, the witness whose assignment was to calculate the tax alleged to be due. Those records establish documented business expenses of \$16,982,751.81, against alleged unreported income of approximately sixteen million dollars. If they had been produced, there would have been no deficiency to prove.

Second, the Forms 1042-S. Defense counsel requested them in writing. The government answered in writing that they did not exist. They did exist, in the government's own production in the earlier case, and the petitioner produced sixty eight of them with the government's Bates numbers on them. Forms 1042-S reporting the distributions and reflecting withholding are the opposite of concealment, and concealment is the affirmative act the government had to prove.

Third, the settlement administrators' statements that the distributions were generally not taxable income. A defendant who relies in good faith on such a statement does not act willfully. *Cheek*, 498 U.S. at 202. The statements were in the government's files and were never produced.

A Rule 5(f) violation and a *Brady* violation of this scope are not independent events. The first is what allows the second to happen without anyone noticing until it is too late. When a court asks whether the absence of the warning mattered, the answer here is visible on the face of the record: the warning was omitted and then every element of the offense was

proved with the dispositive exculpatory proof removed from the case.

D. The question is preserved for review in the only way it could be.

The petitioner raised Rule 5(f) below. It was raised in his pro se reply brief, which the court refused to docket, and it was raised in the reply brief filed by counsel on September 5, 2025. It was also raised in his related petition for a writ of mandamus in that court. The court of appeals said nothing about it. Whatever the government now says about the sequence in which the issue reached the court of appeals, the duty at issue was the district court's, the failure was complete, and this Court has discretion to decide a question that the court below passed over in silence where, as here, the question is legal, is fully developed, and would control the disposition.

II. The decision below makes *Brady* a matter of delivery to a lawyer rather than disclosure to the accused, and it turns the exercise of the right of self-representation into a waiver.

A. The holding.

The court of appeals wrote that the petitioner “does not argue that the government withheld those documents from the defense,” that he argues “only that, after he obtained permission to represent himself, he was unable to review the documents the government provided to his attorney when he was represented by counsel,” and that “[a] *Brady* violation requires the suppression of evidence, and there was none here.” It added, in a footnote, that the

petitioner “has waived any argument that he did not have the opportunity to review the documents that were produced.”

Those two sentences state a rule of decision. They also misdescribe the claim. The petitioner never had the business expense records, before or after he began representing himself, and he obtained them only after the verdict. Delivery to a lawyer ends the inquiry, and a defendant who thereafter represents himself has waived any complaint that he never saw what was delivered.

B. The rule is inconsistent with what Brady protects.

Brady is not a filing requirement. It is a due process guarantee that the defense will have the exculpatory evidence in time to use it. *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *United States v. Bagley*, 473 U.S. 667, 678 (1985). This Court has repeatedly measured suppression by practical availability rather than by the formal fact of a transfer. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995), requires the suppressed evidence to be considered collectively and asks what effect its availability would have had on the trial. *Banks v. Dretke*, 540 U.S. 668, 696 (2004), holds that a defendant is not obliged to scavenge for hints of undisclosed evidence and that the government may not hide evidence and then blame the defendant for not finding it. *Strickler v. Greene*, 527 U.S. 263, 281 to 282 (1999), frames the elements without any suggestion that a delivery to one lawyer in one case discharges the obligation in another.

On the rule announced below, a production made to counsel in a different prosecution, of a body of documents so large that the district court itself described it as excessive and directed the government to narrow it, discharges the obligation even though the petitioner never received the documents and even though the index in this case omitted them. The proof that it discharged nothing is in the record: the government's own revenue agent, the witness who computed the tax due and owing on which the conviction rests, testified that he was given no evidence of any business expenses at all. A production that never reached the government's own expert cannot have delivered to the defense the proof that no tax was due.

C. The waiver footnote conditions one constitutional right on the surrender of another.

The petitioner exercised the right this Court recognized in *Faretta v. California*, 422 U.S. 806 (1975). The consequence, on the reasoning below, is that he waived the right to complain that he could not review discovery that had been given to the lawyers he no longer had. A defendant should not have to choose between conducting his own defense and receiving the evidence that would allow any defense at all. The footnote does not identify any act by which the petitioner relinquished a known right. Under *United States v. Olano*, 507 U.S. 725, 733 (1993), waiver requires the intentional relinquishment of a known right, and what the footnote describes is not that. It is a condition imposed by the government's production practice and

by the petitioner's custody. A month before trial he was transferred from the federal detention center to a county jail without his discovery laptop and without his legal work, none of which was ever returned to him. The data the jail approved did not reach him until October 24, 2023, about a week before trial, and the jail allowed him to review discovery one day a week for fifty minutes. That was the whole of his preparation time with the record of his case, and the data he received contained no business expense records.

The government also cannot rely on the district court's March 2023 direction to identify the relevant discovery. It took the petitioner's laptop from the Bureau of Prisons for the stated purpose of complying with that direction, and it returned the laptop without the business expense records that were the reason the direction was given and the subject of the petitioner's demands at every pretrial hearing and in every motion.

The conflict is sharpest where the pro se defendant is incarcerated. *Faretta* guarantees the right to conduct a defense. That guarantee assumes access to the materials of the defense. When the government produces to former counsel, the defendant is placed in a position where the only way to put the suppressed proof before the jury is to abandon another constitutional right, in this case by testifying, in order to cure the government's failure.

D. The suppression here defeated every element.

Materiality is not close. The three categories of suppressed evidence map onto the three elements of

26 U.S.C. 7201. The business records defeat the deficiency. The Forms 1042-S defeat the affirmative act. The administrators' statements defeat willfulness. *Sansone*, 380 U.S. at 351, requires the government to prove all three. *Kyles* requires the suppressed material to be weighed together. Weighed together, what was withheld here was not impeachment at the margins. It was the defense. The expenses documented in the petitioner's post trial filings, \$16,982,751.81 against alleged income of approximately sixteen million dollars, have never been contested in a single line item by the government. Had they been produced, there would have been no tax due and owing, and no offense to try.

Four facts make the point unanswerable on this record.

One. The government says it produced the business records. Its own tax computation expert testified he received none.

Two. The government loaded its discovery onto the petitioner's laptop, took the laptop back from the Bureau of Prisons to update it after the district court directed it to identify the relevant discovery, and returned it still without the business expense records.

Three. The government told the defense in writing that the Forms 1042-S did not exist, and then, when sixty eight of them were produced at trial bearing its own Bates numbers, questioned their authenticity and called them a handful worth about twelve thousand dollars, when the sixty eight forms before

the court reflected more than \$375,330 reported to the Internal Revenue Service for two settlement funds in a single year.

Four. The petitioner told the district court all of this and was denied relief by the same judge who never gave the Rule 5(f) warning.

E. The default holding compounds the error.

The court of appeals declined to reach the claims concerning the Forms 1042-S and the settlement administrators' claim letters because they had not been included in the Rule 33 motion. The petitioner had in fact placed both categories before the district court in his own timely pro se post trial filings, which identified the suppression of the Forms 1042-S and of the claims administrator letters that "stated the payments were not taxable." He pressed them again in his motion for reconsideration, which he deposited with jail staff on Friday, May 24, 2024, the day before his notice of appeal was filed, and in which he cited *Houston v. Lack*, 487 U.S. 266 (1988) and submitted a declaration of the date of deposit. Under *Houston* a pro se prisoner's filing is made when it is delivered to prison authorities, not when the mail room sends it or the clerk stamps it. The district court instead relied on a postmark. The effect of that approach is to default the very claims that arise from evidence the government said did not exist.

III. The court that decided this appeal denied a motion to disqualify itself, in one sentence, through the judge who then sat on the panel.

A. The asserted conflict, and the silence that has met it.

The petitioner has asserted, in filings in the court of appeals in this case and in No. 24-1381, that Jeanne Donnelly, the Assistant Circuit Executive for Legal Affairs in the Office of the Circuit Executive of the United States Court of Appeals for the Third Circuit, is the spouse of John V. Donnelly III, the Securities and Exchange Commission attorney who led the Commission's enforcement action against him. Her position and employer are documented on the court's own website, which also identifies her as the court's coordinator for employment dispute resolution. She is also an attorney. The public register of the Disciplinary Board of the Supreme Court of Pennsylvania lists Jeanne T. Donnelly, Attorney ID No. 93845, admitted November 16, 2004, status active, whose employer of record is the "U.S. Court of Appeals for the Third Circuit" and whose business address of record is the Third Circuit Court of Appeals, 22409 United States Courthouse, 601 Market Street, Philadelphia. App. L. She is therefore not merely an administrator of the court. She is a lawyer employed by the court, serving in the office responsible for the court's legal affairs, and bound as an officer of the court by the rules of professional conduct.

The same register lists John V. Donnelly III, Attorney ID No. 93846, admitted two days later on

November 18, 2004, status active, whose employer of record is the "U.S. Securities and Exchange Commission" and whose business address of record is the Commission's Philadelphia office. App. L. The register thus documents, from the Commonwealth's own records, that two attorneys sharing a surname were admitted in the same group with consecutive registration numbers, one of whom is employed by the court of appeals that has decided every one of the petitioner's appeals, and the other by the agency that obtained the freeze of his assets and the judgment against him. The petitioner has said for more than two years that they are married. The Commission has not denied it. The United States has not denied it. No court has addressed it. The Commission's litigation release and the signature block of its complaint identify Mr. Donnelly as the attorney leading the action against the petitioner. He requested the service of process on the petitioner, and signed the certificate of service on the executed return. No. 21-cv-04845, ECF No. 10 (Nov. 8, 2021). He remains the Commission's counsel of record in that action today, and personally signed its opposition to the petitioner's motion under Rule 60(b) (4), filed August 26, 2026. Id., ECF No. 423.

That office is responsible for the legal affairs of the court in which all four of the petitioner's appeals have been decided or are pending. Those four matters have produced one sentence denials, refusals to recuse or to transfer, and, in the mandamus case, a disposition that came three hundred sixty one days after the petition was docketed and that addressed none of the arguments raised. In the appeal that

challenges the Commission's own freeze and judgment, No. 24-1381, the Commission has filed no response brief in more than thirty months.

The relationship the petitioner asserts has never been denied. Not by the Commission. Not by the United States. Not by the district court. Not by the court of appeals. In more than two years of filings, no order has addressed it and no brief has answered it. Neither the Commission, nor its counsel, nor the United States, nor the district court, nor the court of appeals has denied it. An assertion of that kind, about the appearance of impartiality in the forum itself, ordinarily draws a response, if only to dispose of it. Here it has drawn none.

B. The court decided the question of its own disqualification, without reasons.

On August 21, 2025, in No. 24-1381, the petitioner moved to disqualify the entire Third Circuit under 28 U.S.C. 455 and to certify the matter for immediate review by this Court. Six days later the motion was denied in a single sentence: "Appellant's requests to disqualify the entire Third Circuit in this matter and to certify the case for immediate review by the Supreme Court of the United States are hereby Denied." The order gives no reasons. It was authored by the Chief Judge and joined by eleven other circuit judges.

Seven months later the same Chief Judge sat on the panel that decided this appeal and affirmed the petitioner's conviction. When rehearing was sought, the poll went to the judges of the circuit, including judges who are named subjects of a pending

complaint of judicial misconduct filed by the petitioner, and rehearing was denied.

When the petitioner asked, in both dockets, for a statement of reasons for that ruling, the request was itself denied without reasons. In the mandamus case a motion to transfer the proceedings to the Second Circuit was filed on March 24, 2025 and disposed of on January 26, 2026 in a single line, as one of “[p]etitioner’s pending motions,” without discussion, three hundred sixty one days after the petition was docketed.

C. Why this matters under this Court’s decisions.

Section 455(a) asks whether the judge’s impartiality might reasonably be questioned. The inquiry is objective. It does not depend on proof of actual bias, and it exists because the appearance of justice is itself a component of justice. *Offutt v. United States*, 348 U.S. 11, 14 (1954); *In re Murchison*, 349 U.S. 133, 136 (1955). In *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988), this Court held that relief was available under Section 455(a) even where the judge was unaware of the circumstance creating the appearance of partiality, and it emphasized the public’s confidence in the judiciary as the interest the statute protects. In *Williams v. Pennsylvania*, 579 U.S. 1 (2016), this Court held that an unconstitutional failure to recuse by one member of a multimember court is not cured by the participation of the others, because the influence of the disqualified judge cannot be measured. And in *Caperton v. A.T. Massey Coal Co.*,

556 U.S. 868 (2009), this Court held that in extreme cases the Due Process Clause requires recusal regardless of the statutory standard.

Those principles converge here. A judge who has denied, in his own unexplained order, a motion asserting that the entire court including him is disqualified, and who then sits in judgment on the movant's criminal appeal, presents the very appearance the statute forbids. The problem is structural rather than personal. It cannot be cured by the same court, because every avenue of review inside the circuit runs back to the judges whose participation is challenged. That is why the petitioner asked the court of appeals to certify the question here, and why this Court's intervention is the only means of resolving it.

D. The related appeal shows what the conflict has produced.

The appeal in No. 24-1381, which challenges the asset freeze and the judgment obtained by Mr. Donnelly's office, was docketed on March 5, 2024. It has now been pending more than thirty months.¹ The petitioner filed a pro se brief and a pro se supplemental brief in the summer of 2024. The Commission then obtained an order vacating the

¹ The result is a closed loop. Denying the petitioner's motion under Rule 60(b)(4), the district court added that, because the appeal in No. 24-1381 is pending, it "lacks authority to grant any motions brought pursuant to Federal Rule of Civil Procedure 60(b)(4)." No. 21-cv-04845, ECF No. 425, at 2 (citing Fed. R. Civ. P. 62.1(a)). The district court will not act while the appeal is pending, and the appeal does not move because the Commission has not briefed it.

briefing schedule, and those pro se filings were removed from the docket; a brief was filed by counsel on January 27, 2025, and the petitioner's pro se filings were later restored as an appendix to it. The Commission sought and received extension after extension of its own deadline, in one instance by order of a judge who later sat on motions in these matters, and it had still not filed any response brief when, in September 2025, it asked for sixty days more.

Meanwhile the freeze has remained in force. On January 23, 2024 the district court entered a final judgment against the petitioner and his entities for disgorgement of \$43,496,148 and prejudgment interest of \$6,975,425, a total of \$50,471,573, in a case the petitioner contends was brought without subject matter jurisdiction and resolved on a record that includes an impossible return of service. That judgment is the largest money judgment entered against him, and it was entered while the appeal from it sat unbriefed. The criminal judgments in the two prosecutions imposed restitution and forfeiture of \$47,769,779.02 in the fraud case, since vacated in relevant part and remanded, and restitution of \$6,023,189 in this one, and the civil judgment recites that the petitioner's obligation to the Commission is reduced by the criminal amounts. The point is not the arithmetic of the offsets. It is that judgments of this magnitude were entered and are being enforced in a forum whose disqualification the petitioner has asked four times to have adjudicated, and that the appeal which would test the largest of them has sat for two and a half years without a response brief. It

is the same freeze that left him unable to retain counsel of his choice in the prosecution that produced this petition.

IV. This case is an appropriate vehicle.

The questions are legal and the record is complete. The first question turns on the text of a rule, not on disputed facts. The second turns on a holding the court of appeals actually announced, with its own footnote supplying the waiver premise. The third turns on documents that are public: the court's own website, the Commission's own filings, and the orders of the court of appeals.

Nothing about the posture impedes review. There is no jurisdictional obstacle, no vehicle problem arising from an alternative ground of decision, and no factual dispute this Court would need to resolve. The government's own filings supply many of the facts on which the petition relies, including its statement that it produced the earlier discovery to counsel, its characterization of the Forms 1042-S, and its concession that the tax returns of the petitioner's entities were part of its production.

Finally, the questions are of consequence beyond this case. Rule 5(f) applies in every federal criminal case. The *Brady* question affects every defendant who exercises the right to represent himself after counsel has received discovery, a category that includes a large share of incarcerated pro se litigants. The disqualification question concerns the confidence of the public in the courts of appeals, which is the interest Section 455(a) was written to protect.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the Court should grant the petition, vacate the judgment below, and remand for consideration of the effect of Federal Rule of Criminal Procedure 5(f) and of the suppression of the exculpatory evidence described in this petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'J. Cammarata', written over a horizontal line.

Joseph A. Cammarata
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September 29, 2026 .